



# E-Forum

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## U.S. Supreme Court Rules in Favor of Federal Trade Commission

The North Carolina State Board of Dental Examiners is disappointed with the recent decision of the U.S. Supreme Court in the case of *The North Carolina State Board of Dental Examiners v. The Federal Trade Commission*. Despite this disappointment, the Board accepts the Court’s ruling and will conduct itself in accordance with the decision. Nevertheless, the Board believes the dissent filed by Justice Alito better expresses what the law is and how it applies to the facts of this case. Furthermore, Justice Alito is correct in his assessment that the Court’s decision “...will create practical problems and is likely to have far-reaching effects on the States’ regulation of professions.”

In concluding that state supervision is needed for state agencies on which “a controlling number of decisionmakers are active market participants in the occupation the board regulates,” the court relied in part on the presumption that members of state agencies who are market participants may harbor, even unwittingly, “private anticompetitive motives” and readily accept invitations for “private self-dealing.” The Board strongly disagrees with this reasoning. As a legal matter, the Board entered this case believing federal antitrust laws were not intended to second-guess how states choose to structure their agencies. As a factual matter, the Dental Board has always considered this case to be only about public safety and protection. However, under the FTC’s current antitrust procedures, concerns about public health and safety were rejected and the

Board’s real evidence of public harm and potential public harm was dismissed as irrelevant.

As the dissent points out, the decision will also create serious practical problems going forward. For the past century, states have structured their agencies where a “controlling number of decisionmakers” are experts with the ability to make accurate and timely decisions in highly specialized fields. The decision now requires that agencies either change the make-up of their Boards so that experts are “non-controlling,” or set up another level of oversight where state bureaucrats provide “supervision.” In either case, non-experts will have the difficult task of evaluating the decisions of experts in order to provide the courts and the public with a “realistic assurance” that agency decisions support state policy.

In addition, it must be pointed out that men and women of integrity and commitment who volunteer to serve in state agencies are now presumed to act, even unwittingly, out of economic self-interest rather than a desire to serve the public. Though the Court was careful to say that this conclusion “does not question the good faith of state officers,” it remains to be seen if this new presumption, coupled with the potential exposure to federal antitrust actions, will have a chilling effect upon the willingness of professionals to serve in state agencies.

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### Upcoming 2015 Board Meetings

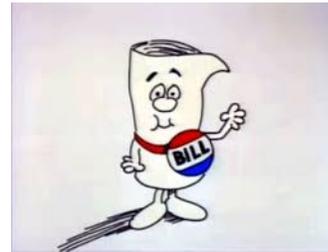
Meetings begin at 8:30 am unless otherwise noted.

April 10 - 11	Wilmington, NC Hilton Riverside
May 13 - 14	Calabash, NC Thistle Golf Club
June 19 - 20	Morrisville, NC Board Office
July 10 - 11	Charlotte, NC TBD
August 7-8	Morrisville, NC Board Office
September 11-12	Morrisville, NC Board Office
October 16-17	Morrisville, NC Board Office
November 20-21	Morrisville, NC Board Office
December 11-12	Morrisville, NC Board Office

## Bill Introduced to Allow Dental Hygienists to Administer Intraoral Local Anesthetics

House Bill 286 (proposing to allow hygienists to administer local anesthetics) was discussed in the House Health & Human Services Committee and passed with a unanimous favorable report on March 25, 2015. Representative Bert Jones, DDS, was the primary sponsor of the bill. The bill has since passed the House unanimously and will cross over to the senate for consideration. Click on this link to read the full text of the bill: <http://www.ncga.state.nc.us/Sessions/2015/Bills/House/PDF/H286v2.pdf>

To follow the progress of the bill through the legislative process, click here: <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2015&BillID=h286&submitButton=Go>



**REMINDER:** Until this bill passes both houses of the General Assembly, is signed into law by the Governor, and Rules are developed for implementation, dental hygienists are not allowed to administer local intraoral dental anesthetics in North Carolina.

## Results of State Audit

The Office of the State Auditor conducted a performance audit of the Board's programs to determine "whether the oversight of the practice of dentistry by [the] North Carolina State Board of Dental Examiners could be improved to better protect public health and safety." Over a six-month period, a team of auditors examined all aspects of the Board's administration, operations and rules. The audit produced three findings; all related to rules and procedures governing general anesthesia and sedation. The key findings are:

- The Board allows dentists to provide sedation services before it inspects the dental facilities to ensure that the proper skills, equipment, drugs, support personnel, and procedures are in place to safely perform dental sedation and respond to emergencies.
- The Board does not conduct periodic inspections after it issues the initial sedation permits to ensure that dental facilities maintain the ability to safely perform dental sedation and respond to medical emergencies.
- The Board does not verify that dentists complete the continuing education hours that are required as a condition for renewal of anesthesia and sedation permits.

The Office of State Auditor also made the following key recommendations:

- The Board should reconsider its policy of issuing temporary anesthesia and sedation permits prior to an inspection of the dental facilities.
- The Board should set up a risk-based schedule for inspecting dentists and dental facilities.
- The Board should develop standardized checklists, guides, or other documents covering the areas of compliance/requirements to be checked during the inspection and the level of reporting involved.
- The Board should verify continuing education hours that dentists report when renewing anesthesia and sedation permits.

In its official response to the audit report, the Board noted that the sedation committee had already recommended elimination of temporary sedation permits and verification of CE hours for those renewing anesthesia and sedation permits. The Board pledged to implement the auditor's recommendation regarding office inspections as quickly as possible.

To view the State Auditor's full report, go to:

<http://www.ncauditor.net/EPSWeb/Reports/FiscalControl/FCA-2014-8117.pdf>

## North Carolina Controlled Substance Reporting System (CSRS)

North Carolina dentists often encounter patients who feign dental pain or illness in order to obtain prescription drugs. Likewise, the Board often receives reports from pharmacists about dentists whose prescribing practices for scheduled drugs raise reasonable suspicion of improper prescribing. In other cases, the Board has discovered that third parties have used a dentist's DEA information to obtain prescription drugs illegally, without the dentist's knowledge.

The North Carolina CSRS was developed to address these situations in a non-punitive manner. Dentists can

use the system to identify and refer to treatment those patients who "doctor shop" in an attempt to abuse or misuse prescription drugs. They may also perform "self-queries" to verify all prescriptions that have been filled using their DEA information reflect the proper amount and dosage and thereby prevent any improper or illegal use. For more information or to apply, visit the Department of Health and Human Services website:

<http://www.ncdhhs.gov/mhddsas/controlledsubstance/index.htm>

## Filing Period Now Open

Those interested in running for Board positions may do so by filing an appropriate petition with the Board. There is no standard petition form, but the petition must be signed by not less than 10 dentists who are licensed to practice in North Carolina and who are residing or practicing in this state. It must be received in the Board's office before midnight May 20, 2015. Two dentist positions will be eligible for election this year. (One of the two open positions is currently filled by a dentist member who is eligible to run for a second term.) Since signatures are often difficult to read and the identity of those signing the petition must be verified, candidates should ask signatories to include their license number and print their names.

### We're Moving!

The lease for the Board's current office space is expiring and the Board has negotiated a lease for a new space in the same office park. Beginning in July, 2015 the Board's office will relocate to:

**2000 Perimeter Park Dr., Suite 160  
Morrisville, NC 27560**

### The Numbers (as of December 31, 2014)

	<u>Dentists</u>	<u>Dental Hygienists</u>
Licensed by NC	5,662	7,605
Licensed & living in NC	5,004	6,662
Licensed & Active in NC	4,712	5,814

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**The purpose of the North Carolina State Board of Dental Examiners is to ensure that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry and dental hygiene in the state of North Carolina.**

We're on the web!

[ncdentalboard.org](http://ncdentalboard.org)

### Current Board Members (as of August 1, 2014)

	<u>Term Expires</u>	<u>Hometown</u>
Stanley L. Allen, DDS (President)	2017	Greensboro, NC
Clifford O. Feingold, DDS* (Sec./Treas.)	2015	Asheville, NC
David A. Howdy, DDS (Past. Pres.)	2016	Washington, NC
Kenneth M. Sadler, DDS	2015	Winston-Salem, NC
William M. Litaker, DDS*	2016	Hickory, NC
Merlin W. Young, DDS*	2017	Wendell, NC
Carla J. Stack, RDH	2017	Charlotte, NC
James B. Hemby, Jr, PhD (Consumer)	2015	Raleigh, NC

*\*Eligible to run for a second term.*